

Comprehensive Sentencing Task Force
Colorado Commission on Criminal and Juvenile Justice
Minutes

February 11, 2014, 1:30PM-4:30PM
710 Kipling, 3rd Floor Conference room

ATTENDEES:

CHAIR

Norm Mueller, Co-Chair/ Private Defense Attorney

TASK FORCE MEMBERS

Dianne Tramutola-Lawson/CURE

Kate Horn-Murphy/Victims Representative, 17th JD

Mark Evans/ Public Defender's office (*non-voting member*)

Dana Wilks/Judicial Department

Glenn Tapia/Division of Criminal Justice, Office of Community Corrections

Jason Middleton/Public Defender

Joe Pelle/Sheriff, Boulder County

Walt Pesterfield/Division of Adult Parole

STAFF

Paul Herman/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

ABSENT

Charles Garcia/Denver Crime Prevention & Control Commission

Judge Martin Egelhoff/Denver District Court

Jeanne Smith, Co-Chair/Division of Criminal Justice

Matt Durkin/Attorney General's office

Dave Young/DA 17th Judicial District

Denise Balazic/Parole Board

Maureen Cain/Criminal Defense Attorney

Michael Dougherty/1st Judicial District

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Norm Mueller welcomed the group and previewed the agenda. Jeanne Smith couldn't make it today. Task Force members introduced themselves to the newest member, Walt Pesterfield, the new director for the Adult Division of Parole.</p>
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<p>Issue/Topic: Updates Action: No further action</p>	<p>Discussion: Mark Evans updated the group on the status of the Motor Vehicle Theft recommendation and Joe Pelle updated the task force members on the issue of an inmate in Denver serving a lengthy jail sentence on multiple misdemeanors, followed by a lengthy DOC sentence.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Mark reports that the MVT recommendation received CCJJ approval last week through an electronic email vote. • The MVT recommendation will be rolled into the other 'Value-based harmonizing' recommendation bill being presented to the legislature. • Joe Pelle provided an update on the lengthy consecutive jail/doc sentence issue in Denver. • This particular case centers on an inmate sentenced on multiple misdemeanors who received 9 years in the county jail prior to an 18 year DOC sentence. • Joe presented this issue to the sheriffs association to try to gauge if this is happening in other jurisdictions and is a bigger problem. • Joe received no feedback from any other sheriffs indicating that this is ongoing. • This case is an outlier and extreme, but it's doubtful the CCJJ will take up an issue that is seemingly very rare. • Normally the longest sentence to jail would be two years, and normally jail staff can apply incentive programs and transitional planning for someone staying that length of time. • With an inmate sentenced for nine years, there's no way to motivate that person – they're a high risk inmate with a lengthy sentence in a local facility. • The law changed in 2007 to mandate that jail sentences be served before DOC prison sentences. The thought was in most cases for an offender to do their 60-90 days in a local jail then go to DOC. • Since this is not a systemic problem, the CCJJ will likely not take it up. <p><u>What's next</u></p> <ul style="list-style-type: none"> • No further action
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Issue/Topic:	Discussion:
<p data-bbox="120 212 509 275">Data Request Feedback/Habitual Offenders</p> <p data-bbox="269 317 358 348">Action:</p> <p data-bbox="94 390 532 558">Add the Habitual Data issue to the agenda again for the meeting next month. Peg to gather additional data and the group will decide where to go on this issue at that point.</p>	<p data-bbox="561 212 1425 275">Peg Flick shared data outcomes and presented a handout to the group in response to questions asked last month about habitual offenders.</p> <p data-bbox="561 317 802 348"><i>DISCUSSION POINTS</i></p> <ul data-bbox="610 359 1528 1913" style="list-style-type: none"> • Jason and Michael both requested data last month about a variety of habitual offender issues. • Peg shared that she’s still working on the request for Michael and for this meeting will focus on the request from Jason. • For this analysis Peg looked at filings for three fiscal years. • It’s important to note that during that time frame the statute itself was being amended. • Three bullets at the top of the document describe the statutory changes. • Table one shows how many times that statute is being filed. • 18-1.3-801 is known as the little habitual, 18-1.3-801(2.5) is known as the big habitual. • Little habitual comes into play when an offender has two prior felonies within ten years. • In that scenario the resulting sentence is the multiplier of the maximum presumptive times 3. • The Big Habitual is 4 times the maximum. • A normal 8 year (that becomes a habitual with the little habitual) goes three times to 24. • The big habitual (for a 3 times previously convicted felony offender) gets 4 x the maximum. • There’s a mitigated and aggravated range as well, but most things get benchmarked in the middle. • Keep in mind the habitual charge is NOT an automatic enhancement, therefore it has to be charged and decided by the DA in order to proceed. • Peg reports she completed a data search to reveal how many times habitual was actually charged and there was a drop between 2012 and 2013 in number of times charged. • Table 2 shows a breakout by law class. • All filings are down across the board and there is a corresponding drop in felony filings as well. • Table 3 shows a break down by race – and there is an obvious minority overrepresentation for blacks. • As for gender there’s a decrease in habitual filings for females outlined in table 4. • Table 5 shows the judicial district where the case was filed. • There’s been a big drop in habitual filings in the 18th judicial district with the recent change in the District Attorney there. • The 20th also showed a drop in filings. • The criteria for priors has been changed which is another reason filings have dropped. • The 17th and 18th are about the same size, but dramatically different. • Table 6 – shows the most serious crime category where the habitual is

<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Data Request Feedback/Habitual Offenders</p>	<p>being filed.</p> <ul style="list-style-type: none"> • Table 7 – shows outcomes for cases filed with Habitual Offender statute charged from FY 11 to FY 13. Even though the charge is filed it also has to be proven, this shows the percentages of not proven compared to proven. In 8% of cases where it’s filed is it actually proven. • Table 8 shows the proven/not proven stats by judicial district. • Table 9 shows data broken out by race, it looks the same except where race is listed as other. • Keep in mind race data in the court system is not extremely reliable. • Figure 1 shows sentences to DOC when the charge is proven. • Table 10 shows the same data but categorized using categories on the last page. <p>Questions-</p> <ul style="list-style-type: none"> • On appendix A where it shows “Accidents or death”, does that include Vehicular Homicide or DUI? Yes. • Peg shared that during the March meeting she will have data on the percentage of cases where when the charge is eligible, what percentage is actually charged. • Jason adds that in the appellate world they will often read a sentencing transcript where someone is getting habitual when they’re non-violent and some judges are saying it’s unfair but there’s nothing they can do about it. It’s basically impeding judicial discretion. • The judge can only veer from the mandated sentence if the case is found unconstitutional per the 8th amendment, which is hard to prove. • Most cases are found to be constitutional, although they may not be ‘fair’. • A person could have a robbery prior, but robbery can encompass a whole bunch of things, and looking at the facts doesn’t always work. • When looking at labels someone may look like a habitual offender, but they may not really fit for ‘non-violent offenses’. • From the data it looks like a fair number of people are getting habitual for things like theft, drugs, etc. • The question is should there be more options available for these types of habitual situations where the predicate offense is non-violent? • There’s no relief valve under the state law. • Once charged and proven that habitual sentence number is the number. • Should we look at a relief valve options (like a 35B) for habituals? • Is there a way to make this fairer, particularly in the way it’s used by DA’s jurisdiction to jurisdiction? • There are a few phases to this issue – <ul style="list-style-type: none"> -The data we have now is in addition to what we had previously (before the change in the 18th). -One of the key parts in the discussion last time was the percentage proven, which here, is not very high. -Plus, this additional piece was Michael’s question about what is the whole universe of people who could get charged habitual but don’t? • The theory from Michael’s perspective is that even though there are many cases where they are habitual eligible, a lot of prosecutors aren’t
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<p>Issue/Topic:</p> <p>Data Request Feedback/Habitual Offenders</p>	<p>filing the charge.</p> <ul style="list-style-type: none"> • Until we have that second piece of information, we should hold off, but once we get that info we need to be real clear about our goal with this work going forward. • Basically is this just one or two prosecutors abusing this and how it ties into trial outcomes and whether a defendant decides to go to trial? • Prosecutors always have the discretion, so maybe the next question is should there be a release valve so a judge can over-ride in a way? • Habitual is used in plea negotiations, even though it may not surface. • We're using very long term prison sentences for people who are not (at first blush) committing crimes of violence. • Would we want to look at what types of crimes trigger the habitual? • For example, three thefts that put someone in for 64 years is not a good use of resources. • This gets back to violent vs. non-violent, and the career criminals. • In previous discussions, the focal point was on how best to deal with the career criminal. • The issues with criminality and crime are with career criminals – so it isn't necessarily a matter of violence as much as the level and length of the history of criminality and the impact on the community. • Some of the past conversations were about should we, or should we not have habitual sentencing options. • Is there some sort of middle ground work that could be done where we could enable prosecutors to have the tools they need? • Rather than have it or get rid of it, maybe we shouldn't have an all or nothing discussion but maybe something else. <p><u>What's next</u></p> <ul style="list-style-type: none"> • We're at a point where the habitual discussion is surfacing again in this task force. • We have some new data so let's see how impactful this is on how we move forward. • We need to decide whether to move forward with some work on this issue or are we at a stalemate? • Let's put this on the agenda again for meeting next month, Peg to gather additional data and then we'll decide where to go on this issue.
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<p>Issue/Topic:</p> <p>Identified areas for future study</p> <p>Action:</p>	<p>Discussion:</p> <p>Paul reminds the group that at the last meeting the task force brainstormed about the interest of this group and where the group may want to go next.</p> <p>Norm provides an update on the status of the Sex Offense Working Group:</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • The sex offender working group has four teams – Money, Data, Front End issues and Classification.
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<p style="text-align: center;">Issue/Topic:</p> <p>Identified areas for future study</p>	<ul style="list-style-type: none"> • Money and funding has always been an issue for Sex Offenses. Maureen and her work team are gathering additional information. • The Data team deals with data that follows the offender through the system. Chris Lobanov-Rostovsky leads this team. • Kate Horn-Murphy is leading the Front End user group and focusing on what info prosecutors need. • Judge Bailin and her team are gathering information for the classification group. The goal of the Classification team is to look at whether we should end up recommending a determinate class 4 felony for sex offenses. Felony 5's and 6's are determinate, but felony 4's and below are "x" number of years to life. Turning into lifetime incarceration vs. lifetime supervision. • The group was originally trying to look just simply at whether there should be a Determinate F4. The Classification Team has had lots of discussion about the whole classification scheme. • The Sex Offense Working Group now wants to ask the Task force and the Commission if they can look at the issue a little more broadly. • The Classification team will also be taking another look at probation early termination, but for the other issues want to come back here and ask the Commission for a little broader mandate. <p>Paul refreshes the group about the January meeting and the discussion around a variety of issues that may be of interest to the Sentencing Task Force.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Staff took the conversation from the January meeting and put it into categories. • Paul proposed looking at those categories and making sure there's clarity on what the issues are in each category and what the group would be trying to achieve moving forward. • Paul proposes going through each category so everyone is clear and on the same page about what we're talking about and what we would be trying to achieve moving forward. • Let's go through these and see if we correctly reflected the issues and then gather the interest level. After that, let's look at impact/ feasibility. <p><u>PSI's</u></p> <ul style="list-style-type: none"> • When the group has talked about sentencing and options, here in Colorado, historically, we've done what we could to mandate PSI's. • In some states the PSI is mandated, unless otherwise waived by the judge. • The question is "What's the appropriate circumstance for ordering a PSI, what should be in it, who should get it". • Over time probation has looked at the PSIR, its needs, uses, content and is in a different place today as far as what can be offered to the court.
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<p>Issue/Topic:</p> <p>Identified areas for future study</p>	<p>Probation Assessment Summary Report presentation/Dana -</p> <ul style="list-style-type: none"> • Dana updates the group on the new Probation Assessment Summary Report (the ASR), which is intended to be a shortened version of the PSIR. • Dana distributes three items to the group – an actual copy of what the report looks like, the instructions for that report, and a cheat sheet reference guide around the ASR. • The Assessment Summary report was developed out of needs in the 21st JD for the EBDM project. • The Judge there wanted something to help sentence folks without a full blown PSI. • In less than 40% of felony cases is a PSI’s performed across the state. • The ASR was developed to provide information around risk and needs areas. • Dana explains that at the top of the instrument is an arrow indicating midfields. • The purpose of the scale is to provide risk indicators around the top 4 criminogenic needs areas. • At the end of the report there’s an option for a full PSI to be recommended. • Dana explains that Judges currently do not like the instrument because they don’t want to let go of getting the full criminal history background. • Judges really want actual criminal history before sentencing. • Pueblo and Canon City are both using the instrument quite a bit. • They’re not sure what to do next with this as judges want criminal history, but don’t want to order a full PSI. • Ideally it would be great to have a PSI on everyone, but fiscally it’s impossible. • Dana reports she’s looking at statutory requirements of PSIR – maybe we want to look at this so CCJJ could recommend and update to legislation to correspond with current trends in sentencing? • This has come up many times in this task force, so it’s still an issue for many folks around the table. • One of the things the CCJJ is trying to do is to make sure decision makers have as much info as possible at the earliest point, for sentencing purposes. • What the Commission always stands behind is “What does the evidence tell us?” • This has always been an issue of who wants it, who gets it, who’s not getting it. • The central premise is that you want decision makers to have the appropriate information and at the appropriate time. • This conversation is taking place in other states. • The issue is “What the court wants and what it’s used to vs. what we know about the work today and how to really make data driven decisions”. • Dana reports that the final version of the ASR has been available since October. • Currently, 60% of cases are being sentenced with no presentence
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<p>Issue/Topic:</p> <p>Identified areas for future study</p>	<p>investigation.</p> <ul style="list-style-type: none"> • We’re sentencing people based on arbitrary decisions as far as Rink Needs and Responsivity. • NIC is currently looking at the EBDM process. • Colorado is eligible for the next phase of the EBDM project and if Colorado is interested in moving forward they need to have a letter of interest submitted by March 30th. • The idea with this is to address how decisions are made at every phase of the process so that they’re made in a structured evidence- assisted way. The info is only as good as the decision making process that’s there. • One or maybe two states will be selected for this next phase of the EBDM project. • Who would author the letter of interest? CCJJ? • The other side of this coin is the thought that the CCJJ as a whole should be behind this. • Should the support come from CCJJ or DCJ? • If CCJJ is engaged, and requests this, that would be a natural fit • This is an opportune time to have this discussion “The best info at the best time for the best decision making”. • Norm and Jeanne should talk to Jim and Doug about this. • Question for Dana - What is the future roll out of this tool? It’s currently available for every district and it is up to the judge. • They have been informed that it’s available, now it’s up to the local bench to decide. • 60% cases going to direct sentence or stipulated • Judges end up trusting the DA’s for background info. • The instrument is currently available to all jurisdictions. • Probation is in the process of tracking the use of the instrument and is working with chief judges organization on what info they need and are considering possibly running a bill to look at changing some statutes. • The question remains, “How can we increase the use of presentence info?” <p><u>COUNTY JAIL OVERCROWDING</u></p> <ul style="list-style-type: none"> • Joe Pelle reports overall jail populations have now actually stabilized. • There was a worry that with recent changes in statutes resulting in many felonies now classified as misdemeanors that the jail populations would increase. Joe pointed out, however, that with the drop in classifications many crimes that were previously misdemeanors are now actually petty offenses and therefore more opportunities for Restorative Justice Alternatives, etc. – so everything has kind of evened out. • Joe reports though that there is an increase in population numbers despite an overall reduction in filings – and he says this is due to an increase in presentence people in jail and mental health issues. • Currently, the numbers stand at approximately 75-80% presentence folks in jail. • Also, 30% of inmates in jail have an axis one diagnosis. • There’s also a concern about mandatory sentences for DUI’s and
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<p style="text-align: center;">Issue/Topic:</p> <p>Identified areas for future study</p>	<p>sheriffs across the board are favoring felony options for repeat DUIs.</p> <ul style="list-style-type: none"> • Is there a comm. corr. option for DUI's? Boulder is one of few places that offer any sort of program, including in house treatment. • What about a recommendation for a felony sentence for repeat DUI offenders but with a caveat that they get routed somewhere specific for treatment? • Joe reports there are people in the Boulder Co. jail on their sixth conviction for DUI's. • The number of repeat offender DUI's is problematic and the length of sentence is also problematic. • During the last meeting we talked about low risk/high stakes cases (like Veh. Homicide and other outliers) – let's leave it to the Comm. Corr. Task Force to address these populations. • The idea is to better structure Comm. Corr. to be more responsive to specific populations. • This proposal would be a different Comm. Corr. that would keep the low risk offenders away from the high risk offenders, a sort of "Quarter House" rather than a halfway house. • People with Mental Illness spend 3 times the amount of time in jail before sentencing than the regular population. • Why? There are no alternatives for MH folks who come into contact with police other than emergency rooms and jails. • Officers used to be able to take these folks to MH stabilization centers, but there aren't MH stabilization center anymore. • If a police officer contacts someone in a state of crisis, they can either take them to the ER and wait with them for hours, or take to jail on some pretty petty charges. • We've fallen far behind in our ability to take care of someone in a mental health crisis. • Sheriff's now run the largest in-patient MH facilities in the country. • These folks can't bond and so they're medicated and stabilized at jail expense. • In terms of critical issues, MH is huge as are mandatory consecutive sentences on repeat DUI's. • There's also the problem of no central clearing house for jail data statewide, resulting in an inability to thoroughly track what's happening statewide. • If you could give the cop on the street an alternative place to take someone with mental health issues, where they could be sure the person is secure and safe, they would take it. • Boulder has a program called PACE for people with co-existing mental illness and substance abuse issues. There are 50 spaces available under one roof. Boulder took 45 of the frequent front end users and put them there and reduced their jail bed days by thousands. • There are successful models out there but issues remain around funding and staffing. • Boulder also has huge number of homeless in and out constantly on nuisance charges.
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<p style="text-align: center;">Issue/Topic:</p> <p>Identified areas for future study</p>	<p><u>VICTIM'S ISSUES</u></p> <ul style="list-style-type: none"> • The issue came up last month about whether or not there should be a separate work group, or focus areas, specifically dedicated to victim's issues. • Up until now we've only addressed victim's issues by having a victim's rep serve on each of the task forces. • To date, the Commission has not looked at victims issues specifically. • The question should be pushed to the Commission regarding victim issues only addressed as attendant to topical areas. • This is more of a Commission issue to decide how to move forward. • Joe expressed his thoughts that with COVA and a multitude of very active victim advocacy groups, the VRA and multiple constitutional amendments – victims are already well represented and heard at every level. Is this something that the CCJJ should take on? • Kate responds saying that the groups mentioned by Joe are not system-based advocates so there's a difference. • Kate adds that victim issues always come later into the discussion with CCJJ initiatives, after the train has already left the station. • We need to seek input at an earlier stage and demonstrate inclusion in the conversation from the start, not as an afterthought. • This issue moved to Commission <p><u>PATHWAYS</u></p> <ul style="list-style-type: none"> • This task force held many conversations about 'Pathways' years ago and produced a number of documents created from that time period. • Part of the original discussion led to the Diversion recommendation in the hopes of enhancing opportunities around the state. • The 'Pathways' concept is basically about "Do we have the right sentencing options for the right people?" • There's been no movement on this topic other than the Diversion recommendation. • And when talking about the options that are available, certainly having the right info is important as well. • Do we want to revisit this topic? Or is this more of an education issue? • Do we have all the options we need? Are we clear about the purpose for each option? • Not every bucket fits all sentencing goals, but all sentencing goals have a bucket. For instance, if you have a high risk offender with no chance for behavior modification - DOC is your option. However, if there is more of a focus on behavior change, maybe there's a different option (pathway) like Comm. Corr. <p><u>PAROLE ISSUES</u></p> <ul style="list-style-type: none"> • Do we need a specific Parole Task Force? Or could parole related issues be addressed under the yet-to-be-established Re-entry Task Force?
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<p>Issue/Topic:</p> <p>Identified areas for future study</p>	<ul style="list-style-type: none"> • The issues with parole have been around a long time but haven't been addressed. • The question is really about whether this is something the Sentencing Task Force should deal with, or does it belong somewhere else and if so – where? • Parole issues overlap with jail too as far as Tech. Violators housed in jails, etc. • Is this more about the structure of the granting of parole then it is the execution and implementation of actual parole supervisions? Yes. • If this task force doesn't address parole issues then where? • It depends on if the scope is about granting inside/outside- if so, that's here. • This really is a sentencing issue and belongs with this group. <p><u>MANDATORY CONSECUTIVES</u></p> <ul style="list-style-type: none"> • This group has talked about and attempted to address mandatory consecutive sentences many times. • What are the mandatory consecutive sentences under Colo. law? • The COV statute with multiple victims and mandatories is a problem. For example, the drive-by gangbanger shoots one bullet but if there are multiple people in the vicinity then you have multiple victims and multiple counts. With 10 people in the vicinity comes a mandatory consecutive on each person resulting in false inflation of charges <p><u>COMMUNITY CORRECTIONS</u></p> <ul style="list-style-type: none"> • All items that touch on comm. corr. need to be forwarded to the Comm. Corr. Task Force <p><i>WRAP UP AND DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Paul instructs the task force that the next step is to conduct an informal poll regarding all the areas discussed. • The goal is to identify areas that have potential and create interest. • Paul lists the following areas on a flip chart and instructs task force members to place two dots on the areas that members feel should be addressed next by this group – <ul style="list-style-type: none"> -PSI's -Emerging Jail issues -Pathways -Parole Issues -Mandatory Consecutive Sentences • The group is not going to vote on 'Habitual' since data is already being collected to determine where to go next with this. • Keep in mind that Repeat DUI Offenders, MH inmates, and other consecutive sentencing issues are included under the Jail Issues heading.
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<p>Issue/Topic:</p> <p>Identified areas for future study</p>	<p><i>OUTCOMES</i></p> <ul style="list-style-type: none"> • The group voted as follows- <ul style="list-style-type: none"> -PSI's (1 vote) -Emerging Jail issues (5 votes) -Pathways (4 votes) -Parole Issues (3 votes) -Mandatory Consecutive Sentences (5 votes)
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<p>Issue/Topic:</p> <p>Next steps</p> <p>Action:</p> <p>Areas of interest will be forwarded to task force members unable to attend today's meeting, with a request for a vote on the top two issues for future study.</p>	<p>Discussion:</p> <p>Due to the fact that only half the members were in attendance at the meeting, staff will summarize the outcomes and forward the info to the rest of the task force members, asking them to participate with their top two areas of interest as well.</p> <p>The feedback will be pooled and presented to the full task force again in March for final buy off. The top interest areas will then be presented to the CCJJ at their March retreat to ask for commissioners blessing to move forward with study areas.</p>
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<p>Issue/Topic:</p> <p>Adjourn</p> <p>Issue/Topic:</p>	<p>Discussion:</p> <p>The meeting adjourned at 4:45pm.</p>
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Future Meeting Dates:

Meeting Schedule 2013

March 11 th , (Tuesday)	1:30pm – 4:30pm	710 Kipling St., 1 st floor conference room
April 8 th , (Tuesday)	1:30pm – 4:30pm	710 Kipling St., 1 st floor conference room